

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

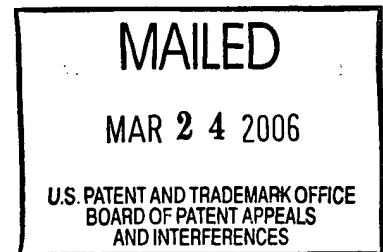
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JURGEN SIENEL, DIETER KOPP, and ULF KNOBLICH

Appeal No. 2005-2429
Application No. 10/069,612

ON BRIEF



Before KRASS, RUGGIERO, and BARRY, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

A patent examiner rejected claims 1-14. The appellants appeal therefrom under 35 U.S.C. § 134(a). We reverse.

I. BACKGROUND

The invention at issue on appeal concerns telecommunications systems for vocal commanding such as name dialing, command & control, and dictation. (Spec. at abs.) Telecommunication systems known to the appellants employ fixed capacity parameters (e.g., a fixed bandwidth, a fixed sampling rate, or noise reduction always switched on or off) for vocal commanding. (*Id.*)

In contrast, the appellants' telecommunication system detects an indication signal (e.g., a telephone number, a key signal, or a vocal signal) originating from a user's terminal or elsewhere in a telecommunications network. Based on the detected signal, the invention adjusts a capacity parameter (e.g., a fixed bandwidth, a fixed sampling rate, or noise reduction always switched on or off) for vocal commanding.

(*Id.*)

A further understanding of the invention can be achieved by reading the following claim.

1. A telecommunication system comprising:

a network; and

a terminal communicably linked to said network,

wherein said network comprises:

a switch comprising a detector for detecting an indication signal generated by said terminal; and

a speech recognizer [sic] for vocal commanding, said speech recognizer comprising an adjustor for adjusting a variable capacity parameter for said vocal commanding based on said indication signal detected by said detector.

Claims 1-14 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S.

Patent No. 6,363,079 ("Barzegar").

II. OPINION

Rather than reiterate the positions of the examiner or the appellants *in toto*, we focus on a point of contention therebetween. The examiner asserts that Barzegar's "providing high priority to voice communications by the ISD 22 by providing a bandwidth on demand (column 13, lines 40-45) . . . necessarily includes a mechanism (adjustor) 'for adjusting a variable capacity parameter', since bandwidth-on-demand must provide a capacity related parameter, such as bandwidth or transmission rate, for implementing the functionality. . . ." (Examiner's Answer at 10.) The appellants argue "the cited reference does not teach or suggest adjusting a capacity parameter for the vocal commanding based on the indication signal, as required by the claims." (Appeal Br. at 11.)

In addressing the point of contention, the Board conducts a two-step analysis. First, we construe the independent claim at issue to determine their scope. Second, we determine whether the construed claims would have been obvious.

A. CLAIM CONSTRUCTION

"Analysis begins with a key legal question — *what* is the invention *claimed*?" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). Here, independent claim 1 recites in pertinent part the following limitations:

"an adjustor for adjusting a variable capacity parameter for said vocal commanding based on said indication signal detected by said detector." Independent claims 4, 7, and 10 include similar limitations. Accordingly, the independent claims require adjusting a variable capacity parameter for vocal commanding based on an indication signal.

B. OBVIOUSNESS DETERMINATION

"Having determined what subject matter is being claimed, the next inquiry is whether the subject matter would have been obvious." *Ex Parte Massingill*, No. 2003-0506, 2004 WL 1646421, at *3 (Bd.Pat.App & Int. 2004). "In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)). "A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

Here, Barzegar discloses "a hybrid fiber twisted pair local loop architecture." Col. 4, ll. 46-47. In the architecture, "[a]n intelligent services director (ISD) 22 may be coupled to a central office 34 via a twisted-pair wire 30, a connector block 26, and/or a main distribution frame (MDF) 28." Col. 5, ll. 3-6. "The central office 34 preferably includes a facilities management platform (FMP) 32 for processing data exchanged across the twisted-pair wire 30." *Id.* at ll. 11-13. "The FMP 32 may process data and/or analog/digitized voice between customer premise equipment (CPE) 10 and any number of networks. For example, the FMP 32 may be interconnected with a synchronous optical network (SONET) 42 for interconnection to any number of additional networks such as an InterSpan backbone 48, the PSTN 46, a public switch switching network (e.g. call setup SS7-type network 44), and/or a network server platform (NSP) 36." *Id.* at ll. 28-35.

The part of the reference cited by the examiner explains that the invention "makes it simple and efficient to provide high priority to voice communications by the ISD 22 by providing a bandwidth on demand as discussed elsewhere. . . ." Col. 12, ll. 42-45. Elsewhere, Barzegar describes the provision of bandwidth of demand as follows.

[W]here calls are placed digitally through the packet network, signaling information may be sent to the NSP 46 along with control information informing the NSP 46 that a virtual circuit for a call is requested. If it is a

voice call, a high priority must be given to the virtual circuit and the NSP 46 must make sure the bandwidth is available. At the time a call is made which is to be routed directly from the FMP 32 through the packet-switched networks (e.g., SONET or ATM), the FMP 32 may be handling data to and from the subscribers. At the time the request for a high priority voice channel is made, the ISD 22 has already de-allocated bandwidth assigned for data transmission to make room for the higher priority voice transmission. The FMP 32 communicates the demand for high priority bandwidth to the NSP 46 and the NSP 36 may deallocate bandwidth formerly dedicated to data transmission (the same data for which bandwidth was de-allocated by the ISD 22) as it, at the same time, allocates bandwidth for the high priority call. This may involve a transmission from the FMP 32 to the NSP 46 telling the NSP 46 that less low-priority data bandwidth is needed in the current call and high priority bandwidth is needed for the new voice call. The NSP 46 then responds by allocating or identifying available circuits (virtual) and providing the appropriate signaling.

Id. at ll. 11-34. Based on these parts of the reference, we agree with the appellants that "Barzegar's teachings with regard to bandwidth on demand simply relate to giving bandwidth allocation priority to voice calls over data transfers (i.e., if an available channel does not exist when a new voice call comes in, a channel may deallocated from data usage for allocation to the new voice call since voice usage has a higher priority than data usage)." (Appeal Br. at 12.)

Once the reference's ISD, FMP, and NSP have allocated bandwidth to a voice call, we are unpersuaded that Barzegar's architecture can adjust a variable capacity parameter for the call. To the contrary, "the capacity parameter for the vocal dialing appears to be fixed. . . ." (Appeal Br. at 11.) Absent a teaching or suggestion of

adjusting a variable capacity parameter for vocal commanding based on an indication signal, we are unpersuaded of a *prima facie* case of obviousness.

Regardless of whether Barzegar's provision of bandwidth on demand adjusts a variable capacity parameter for a call, the examiner admits that "Barzegar do[es] not expressly disclose combining speech recognition for spoken commanding and bandwidth-on-demand together for implementing functionality as the claimed 'said speech recognizer comprising an adjustor for adjusting a variable capacity parameter for said vocal commanding based on said indication signal detected by said detector.'" (Examiner's Answer at 4.) He asserts that such a combination would have been obvious, however, "for the purpose of fully taking advantage of available services and offering efficient communications (column 13, lines 43 and column 15, lines 31-32) for the system." (*Id.* at 5.)

For our part, we agree with the appellants that the sections of Barzegar relied on by the examiner "do not provide any motivation to combine a particular bandwidth allocation with the voice-dialing scenario." (Appeal Br. at 14.) As observed by the appellants, "the cited sections simply indicate the preferred 'embodiment (of Barzegar) makes it simple and efficient to provide high priority to voice communications by the ISD 22 by providing a bandwidth on demand . . . ' (column 13, lines 43) and provides the

implicit advantage that 'voice dialing may be provided by a different company from the one that actually makes the call' (column 15, lines 31-34)." (*Id.*) In other words, both sections describe advantages of Barzegar's architecture as is, without the modification proposed by the examiner. Therefore, we reverse the obviousness rejection of claims 1, 4, 7, and 10 and of claims 2, 3, 5, 6, 8, 9, and 11-14, which depend therefrom.

III. CONCLUSION

In summary, the rejection of claims 1-14 under § 103(a) is reversed. Although the appellants have also requested that "the claims [be] passed to issue," (Appeal Br. at 16), the Board has no authority to issue claims.


ERROL A. KRASS)
Administrative Patent Judge)

Joseph F. Ruggiero
JOSEPH F. RUGGIERO
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES

~~LANCE LEONARD BARRY~~
Administrative Patent Judge

Appeal No. 2005-2429
Application No. 10/069,612

Page 10

SUGHRUE MION ZION
MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20037-3213